IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT APPEAL NO.11 OF 2006
IN
(SUO MOTU) CONTEMPT PETITION NO.116 OF 1995
IN
CRI.MISC.APPLICATION NO.97 OF 1993 OF
DISTRICT & SESSIONS COURT, SOLAPUR

E.N.Sakore,)
Retired Police Inspector,)
at present residing at :)
42/2, Ganesh Nagar,)
Vadgaon Sheri,)
Pune-411 040.) ...APPELLANT.

Versus

The State of Maharashtra)
(A formal party as the contempt)
was a suo motu contempt)) ...RESPONDENT.

Mr.U.P.Warunjikar i/b. Mr.V.B.Tapkir, Advocate for the appellant.

CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.

DATED : OCTOBER 10, 2006

JUDGMENT : (PER SMT.V.K.TAHILRAMANI,J.)

1. We have heard Mr.Uday Warunjikar the learned advocate appearing for the appellant/contemnor. This Contempt Appeal arises out of the judgment and order dated 14th July, 2006 in Contempt Petition No.116 of 1995. The said contempt petition arose out of reference made by the District and Sessions Judge, Solapur under Section 10 of the Contempt of Courts Act, 1971 (for short the Act). By the judgment and

order dated 14th July, 2006, the learned Single Judge held the appellant guilty of contempt as defined under Section 2(b) of the Act and sentenced him to simple imprisonment for a period of seven days and fine of Rs.1500/- (Rs.One thousand five hundred only).

2. Brief facts from which the present proceeding emanates are as follows :

. One Shri.Ramchandra Devkar filed an application for anticipatory bail before the Sessions Court of Solapur being Criminal Misc.Application No.97 of 1993. The said application was preferred in C.R.No.18 of 1992 of Vairag Police Station under Section 409 of the Indian Penal Code. The present appellant was the Investigating Officer in the said case. The application for anticipatory bail came up for hearing before the Sessions Court on 18th February, 1993 and the Court granted ad-interim protection to the applicant-Ramchandra till 20th February, 1993. On 20th February, 1993 the ad-interim order of anticipatory bail was extended till 22nd February, 1993.

3. The charge against the appellant/contemnor is that he arrested applicant-Ramchandra Devkar on 20th February, 1993 at 8:30 p.m. inspite of ad-interim order of anticipatory bail operating in his favour. The case against the appellant is that this was done by him with full knowledge and in defiance of the ad-interim order which was extended upto 22nd February, 1993. Ramchandra was produced before the Magistrate on the next day i.e. 21st February, 1993, on which date he was remanded to police custody till 24th February, 1993. Thereafter, Mr.Ubale, advocate for the applicant-Ramchandra moved the Sessions Court and pointed out that Ramchandra had been arrested by the police inspite of ad-interim order of anticipatory bail which was to operate till 22nd February, 1993. Two separate applications came to be filed by the advocate for Ramchandra; one application was for release of Ramchandra on bail and second application was for initiating contempt action against the present appellant. As far as the bail application of Ramchandra is concerned, he came to be released on bail on 22nd February, 1993; and as far as the second application for initiating contempt action against the appellant is concerned, the Sessions Court issued show cause notice to the

appellant as to why action for contempt of Court should not be taken against him.

4. It is the case of Ramchandra Devkar that his advocate collected two envelopes from the office of the Sessions Court, Solapur. One envelope contained writ of bail and the other envelope contained show cause notice to the appellant. It is the case of Ramchandra that the envelope containing writ of bail was accepted by the appellant, whereas the appellant refused to accept the second envelop containing the show cause notice, when served by his advocate.

5. The appellant appeared before the Sessions Court and filed his affidavit on 2nd March, 1993. Thereafter, Maruti Devkar, who is brother of applicant-Ramchandra, filed his affidavit on 5th March, 1993 before the Court mentioning the details about the conduct of the appellant at the relevant time. Applicant-Ramchandra also filed his affidavit before the Court on 11th March, 1993 spelling out the circumstances in which he came to be arrested. Advocate Mr.Ubale also filed his affidavit dated 12th April, 1993 giving details about the events which preceded the arrest of Ramchandra and also the

conduct of the appellant when the two envelopes were attempted to be served on him. The appellant/contemnor filed his further reply before the Sessions Court on 27th July, 1993.

6. Considering the materials on record, the Sessions Court in its judgment and order dated 8th September, 1993 found that prima-facie the appellant/contemnor had full knowledge that Ramchandra was protected by an order granting ad-interim anticipatory bail and inspite of that, appellant arrested Ramchandra in defiance of the said order. The Sessions Court also accepted the version of other side regarding the conduct of the appellant in refusing to accept the show cause notice. On the basis of these findings, the Sessions Court opined that prima-facie case is made out against the appellant for initiating action for contempt of Court and accordingly made reference to this Court. As a consequence of the reference, Suo Motu Contempt Petition No.116 of 1995 came to be registered. Notice came to be issued to the appellant in the said matter. In response to the said notice, the appellant had filed two affidavits dated 1st December, 1999 and 18th April, 2006 before this

Court.

7. The contempt action against the appellant is essentially on account of two events. The first instance is that inspite of an order granting ad-interim anticipatory bail to Ramchandra, he came to be arrested by the appellant on 20th February, 1993. The second incident is with reference to the conduct of the appellant when the envelope, containing the show cause notice relating to contempt action, was attempted to be served on him.

8. As far as the first incident is concerned i.e. Ramchandra came to be arrested on 20th February, 1993 inspite of the order granting ad-interim anticipatory bail operating in his favour till 22nd February, 1993, the first question which would arise is whether the appellant had knowledge of the said ad-interim order and inspite of that arrested Ramchandra in defiance of the Court’s order. In order to answer the said question, we find it necessary to analyse the stand taken by the rival parties. The stand of applicant-Ramchandra Devkar is that after the ad-interim order was extended by the Court on 20th February, 1993 till 22nd February, 1993, copy of that

order was collected by the Advocate Mr.Ubale for the applicant-Ramchandra. In his affidavit dated 5th March, 1993 Maruti Devkar stated that constables of Vairag police station brought Ramchandra to the police station at about 6:30 p.m. on 20th February, 1993. Soon thereafter Advocate Mr.Ubale also arrived at the police station and he produced ad-interim order extending protection of Ramchandra upto 22nd February, 1993. The copy of that order was shown to the appellant by the Advocate. On seeing the order, the appellant told that he would require presence of Ramchandra for some time only for interrogation purpose and thereafter Ramchandra will be allowed to go. Thereafter Advocate Ubale left the police station. Thereafter, the appellant asked for copy of the bail order, which came to be handed over to him. Appellant kept the said papers in his pocket. Thereafter, Ramchandra was shown as arrested at 8:30 p.m. on 20th February, 1993. The appellant asked Maruti Devkar to arrange for food and cloths for Ramchandra. When Maruti made queries as to why this was necessary when Ramchandra was on bail, Maruti was told not to enquire into such details otherwise he will have to suffer the same consequences. On account of this, Maruti left the police station.

Ramchandra has also filed his affidavit on 11th March, 1993, wherein he stated that on 20th February, 1993 he went to the Sessions Court with his Advocate. After that the order extending protection till 22nd February, 1993 was passed. At about 4:30 p.m. three constables came to him and told him that they had been directed to arrest him. Ramchandra pointed out to them that there was an order protecting him upto 22nd February, 1993. However, one of the constables reiterated that they (police) know to nullify such orders. He further stated that they had been directed by the appellant that they should get hold of Ramchandra and produce him in the police station. Ramchandra requested them that he should be allowed to meet his Advocate, however, the said request was turned down. Thereafter, the said constables forcibly took Ramchandra on bicycle upto Solapur S.T.bus stand and made him board a bus which was to leave for Barshi at 5:30 p.m.. While sitting in the S.T. bus, Ramchandra noticed Advocate Mr.Ubale had come to S.T. stand. He called out to advocate Mr.Ubale, who in turn boarded the same bus and travelled with them to the police station. Advocate Mr.Ubale asked the constables why they were taking Ramchandra to the police station, whereupon they

replied that they were taking Ramchandra to police station on the direction of the appellant. All of them reached the police station at 6:30 p.m.. On reaching there, advocate Mr.Ubale produced copy of order extending protection to Ramchandra upto 22nd February, 1993. However, the appellant stated that he required the presence of Ramchandra for some time for the purposes of interrogation and thereafter Ramchandra would be allowed to go. Hence, advocate Mr.Ubale handed over copy of the bail order to Maruti Devkar, brother of Ramchandra and left. Maruti Devkar handed over the order extending protection till 22nd February, 1993 to the appellant, however, the appellant kept the said order in his pocket and arrested Ramchandra at about 8:30 p.m.. Thereafter, he told Maruti Devkar to arrange for food and clothes for Ramchandra. Ramchandra was produced before the Magistrate at his residence on 21st February, 1993. The Magistrate specifically asked Ramchandra as to whether he has complaint against the police. Ramchandra answered in the negative. It is the case of Ramchandra that he answered in the negative because of threats from the appellant.

9. Advocate Mr.Ubale in his affidavit dated 12th

April, 1993 filed before the Sessions Court stated that he collected the order extending interim protection upto 22nd February, 1993 and went to the place where he has asked Ramchandra to wait. However, he did not find Ramchandra, hence he left for the S.T. bus stand to go Barshi. On reaching S.T. bus stand, he heard Ramchandra calling out to him from the bus. Therefore, he boarded the same bus and he found that Ramchandra was accompanied by three constables. On enquiry, he was told that the three constables caught him forcibly and were taking him to the police station. On enquiry by advocate Mr.Ubale, three constables told him that they were acting on the directions of the appellant and they have no option. Thereafter they all reached the police station at about 6:30 p.m. The appellant was asked as to why Ramchandra was forcibly brought to the police station inspite of the order extending protection to him till 22nd February, 1993. On that, the appellant said that he wanted to interrogate Ramchandra and Ramchandra would be allowed to go thereafter. Thereafter, advocate Mr.Ubale handed over copy of the bail order to Maruti Devkar and left the police station.

10. From the application filed before the Sessions Court as well as separate affidavits referred to above, the case against the appellant is that inspite of an order granting interim protection to Ramchandra till 22nd February, 1993, the appellant arrested him on 20th February, 1993 at 8:30 p.m.

11. As far as this aspect is concerned, the appellant's case is that he had no knowledge about the existence of the bail order dated 18th February, 1993 as well as order dated 20th February, 1993 nor was he informed about the same by anyone including Maruti the brother of Ramchandra. At the time when Ramchandra was arrested, no order was shown to him. Besides this, when Ramchandra was produced on 21st February, 1993 before the Magistrate, he did not make any grievance against the police nor did Ramchandra inform the Magistrate about the existence of such order, nor Maruti the brother of Ramchandra informed this fact to the Court. In the affidavits filed by the appellant dated 2nd March, 1993, 22nd July, 1993 and 1st June, 1995, this stand has been reiterated. It is further stated that if the police had wrongly arrested Ramchandra, Maruti the brother of Ramchandra would have immediately informed advocate Ubale, who,

inturn would have taken the steps for release of Ramchandra and would have taken steps to inform the Magistrate when Ramchandra was produced before the Magistrate. However, nothing of this kind had happened. It is further stated that advocate Ubale resides just one furlong away from Barshi Court. It is further stated that ad interim anticipatory bail order was received by the police station by post only on 23rd February, 1993 and no copy of such order was ever produced before them earlier. It is further stated that when the bail order was produced by Advocate Ubale on 22nd February, 1993 and bond was furnished, Ramchandra immediately came to be released. It is not disputed that Ramchandra was granted ad-interim anticipatory bail on 18th February, 1993, which was to enure till 20th February, 1993 and thereafter, the said protection was extended till 22nd February, 1993.

12. In our opinion when Ramchandra was produced before the appellant at the police station on 20th February, 1993, he would certainly have informed the Appellant about grant of protection. We find it inconceivable that the person who has been granted protection, will not inform the police officer about

the existence of such order. Therefore, at least, the appellant would have been informed by Ramchandra that he has been granted anticipatory protection. We find the stand of the appellant regarding non-production of the copy of order extending the interim protection from 20th February, 1993 to 22nd February, 1993 to be credible. If the applicant Ramchandra had a copy of the order with him, he would have certainly informed the learned Magistrate or made a grievance before the Magistrate. Ramchandra is an educated person he is not an illiterate person, hence, in such case, when the Magistrate made a specific query to him whether he had any complaint against the police, Ramchandra would have pointed out that he had been granted interim protection till 22nd February, 1993. Therefore, the fact that Ramchandra was an educated person and was serving as an Engineer and he did not make any grievance before the Magistrate, lends credibility to the case of the appellant. The stand of Ramchandra that he was forcibly taken from the Court premises by three constables who had been deputed by the respondent, does not appear very credible because, it is his case that he was taken on a bicycle by three constables to Barshi S.T.stand and thereafter to the police

station. It is very difficult to imagine that a person could be forcibly taken on a bicycle from the Sessions Court along crowded roads to the S.T. Bus stand and thereafter to the police station. Therefore, this stand seems to be a little far-fetched, hence, we find it difficult to rely on the same.

13. The stand of the appellant is that as the copy of order was not shown to him or made available to him at the time of arrest, in such case, Ramchandra came to be arrested. However, from the facts on record, it appears that Ramchandra had filed an application for anticipatory bail on 15th February, 1993. The prosecutor had received instructions from the appellant which is evident from the statement made by the Prosecutor on 18th February, 1993 during the hearing of the anticipatory bail application. This clearly presupposes that the appellant being the Investigating Officer was informed about the development of the matter. In such case, the appellant would be aware that Ramchandra had been granted anticipatory bail at least till 20th February, 1993. When that protection was upto 20th February, 1993, Ramchandra could not have been

arrested prior to mid night of 20th February, 1993. In such case, arresting Ramchandra at 8.30 p.m. on 20th February, 1993 would clearly amount to flouting of the orders of the Court. It is relevant to note that prayer for continuation of ad-interim bail was opposed by the Public Prosecutor not only by filing written say on 17th February, 1993 but also on 18th February, 1993 on instructions of the appellant who is the investigating officer. We find it inconceivable that the Public Prosecutor would not have informed the concerned Police Officer about passing of the order on 18th February, 1993. It may not have been possible to convey the order on 18th itself but surely by 20th February, 1993 the order would have been conveyed. In such case, a prudent officer will not proceed with such hasty action without ascertaining the position from the Public Prosecutor. Thus, in such case, as far as the first aspect is concerned, looking to the facts and circumstances, we are of the opinion that the appellant had knowledge of the order granting interim protection at least upto 20th February, 1993 and the appellant has acted in defiance of the said order.

14. The second aspect which is the cause for

initiating the contempt action against the appellant is his conduct in refusing to accept the envelope containing show cause notice of contempt action issued against him. The case made out against the appellant can be seen from the application on 25th February, 1993. The application is filed by the advocate for Ramchandra pointing out to the Court that he himself had gone to the police station along with two packets bearing Nos. 2669 and 2670. One packet contained the order granting bail to Ramchandra and the second packet contained the show cause notice. The appellant accepted the first envelope but he refused to accept the second envelope. It is contended that the very fact of refusing to accept the packet is a misconduct amounting to contempt. This averment in the application is supported by the affidavit of advocate Ubale dated 25th February, 1993. There is also affidavit of Maruti the brother of Ramchandra dated 5th March, 1993 which supports the case made out in the second application dated 25th February, 1993 filed in the lower Court.

15. On the second aspect, the case of the appellant as seen from his affidavit dated 27th July, 1993 is

that advocate Ubale had produced two envelopes, first containing bail order and the another envelope. The second envelope was in open condition. When Advocate Ubale was asked as to why that envelope was open, Advocate Ubale took that open packet on the pretext that he would get it sealed and return it to the appellant. Thereafter, Advocate Ubale had not returned the envelop to the appellant. We have a little hesitation in relying on the stand taken against the appellant. In respect of refusing to accept the show cause notice, it is only word against word of the two parties. Even assuming that the appellant had refused to accept the show cause notice, the appellant has tendered his sincere and unconditional apology before the Sessions Court as well as before this Court in Sue Motu Petition No.116 of 1995 as well as before us. As far the first aspect is concerned, we have already held that the circumstances clearly indicate that the appellant was at least aware of the order granting interim protection to Ramchandra from 18th February, 1993 to 20th February, 1993. In such case, the appellant's action of arresting Ramchandra at 8.30 p.m. on 20th February, 1993 amounts to contempt. On this aspect, we entirely agree with the learned Single Judge that

the act of the appellant in arresting Ramchandra on 20th February, 1993 at 8.30 p.m. clearly amounts to contempt of Court.

16. On behalf of the appellant, Mr.Warunjikar submitted that the act committed by the appellant was an unintentional one. He further stated that the appellant commenced his career in the police force as a "Sepoy" in 1996 and has retired as police inspector. The appellant has received promotion on account of his sheer hard work, he has earned several rewards for the services rendered by him and his service career was spotless. Besides this, the appellant has suffered the trauma of this pending proceedings for over 13 years. Mr.Warunjikar submitted that in such case, the order of sentence of imprisonment is unwarranted. He further submitted that the Court may permit the respondent to purge the contempt and accept his unconditional apology and pass an order of sentence of fine which will meet ends of justice. Mr.Warunjikar has placed reliance upon observations in para no.6 of the decision in **Smt.Pushpaben and Anr. Vs. Narandas V.Badiani and Anr., AIR 1979 S.C. 1536**. In the above decision, in respect of punishment of imprisonment in case of

being held guilty of contempt, it has been observed as under:-

. "A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus, before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule".

17. It appears that the issue of sentence of imprisonment which is required to be awarded in an

extreme fact situation, was not considered by the learned Single Judge on the ground that the apology tendered by the appellant was not found bonafide. It appears that there was some typographical error in the apology submitted by the appellant before the learned Single Judge vide affidavit dated 1st December, 1999. The appellant wanted to tender his unconditional apology as has been submitted by him even before the learned Sessions Judge. However, due to typographical error in the affidavit tendered by the appellant before the learned Single Judge in para 14, it is stated that "I am tendering my conditional apology of the same which I tender before the Sessions Court Solapur". On perusal of the apology submitted by the appellant before the Sessions Court, we have noted that the appellant has clearly stated that he is tendering his unconditional apology. Therefore, from the wordings in para no.14, it is clear that the appellant clearly wanted to state that he is tendering his unconditional apology however, due to typographical error in para 14 of the affidavit tendered before the learned Single Judge, it is reflected that "I am tendering conditional apology". On account of this, it led to the observation by the learned Single Judge that the

apology was not bonafide.

18. Taking into consideration the overall service record of the appellant and on perusal of the affidavits filed by the appellant before the Sessions Court at Solapur and the apology submitted before us, it leads us to believe that the apology was not a qualified or conditional apology, hence, the apology of the appellant deserves to be accepted as bonafide. If the appellant's apology is found to be bonafide and sincere, there is every reason to remit the punishment of imprisonment to be awarded in view of the proviso below Section 12(1) of the Contempt of Court Act. In respect of the first incident while confirming the order of holding the appellant guilty of contempt of Court in respect of the first aspect within meaning of Section 2(b) of the Contempt of Courts Act, we are satisfied that the apology submitted before us by the contemnor is genuine and bonafide. His repentance and willingness to show remorse is reflected in his affidavit dated 28th September, 2006 which makes us to believe that he must be allowed to purge the contempt and therefore, as provided in proviso below Section 12(1) of the Act, we accept the apology and remit the sentence of

imprisonment. The sentence of fine is maintained. However, the fine amount is increased from Rs.1500/- to Rs.2000/-. The fine amount to be deposited within two weeks from today. The Registrar General of this Court to accept the said amount.

19. Looking to the above facts and circumstances, we are of the view that no further action is necessary against the appellant. Hence, if pursuant to the order of the learned Single Judge if any of the retiral benefits of the appellant have been withheld, the same be released to him expeditiously.

20. Appeal is partly allowed in the above terms.

[SMT. RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI,J.]